

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

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DIOCESE OF DULUTH, : INDEX NO.  
: 0:17-cv-03254-DWF-LIB

Plaintiff, :

:

:

v. :

:

: DEPOSITION OF:

LIBERTY MUTUAL INSURANCE : DENNIS CONNOLLY

COMPANY, a Massachusetts :

corporation; CATHOLIC MUTUAL :

RELIEF SOCIETY OF AMERICA, a :

Nebraska Corporation, :

FIREMAN'S FUND INSURANCE :

COMPANY, a California :

corporation; CHURCH MUTUAL :

INSURANCE COMPANY, a :

Wisconsin corporation and THE :

CONTINENTAL INSURANCE :

COMPANY, an Illinois :

corporation, :

:

Defendants. :

- - - - - X

Transcript of the stenographic notes of the  
proceedings in the above-mentioned matter, as taken by  
and before TONIANN ACQUARO, a professional court  
reporter and notary public within and for the State of  
New York, held at the offices of Mintz Levin Cohn Ferris  
Giovsky & Popeo, 666 3rd Avenue, 16th Floor, New York,  
on Thursday, March 15, 2018, commencing at 10:06 in the  
morning.

Job No. 2643368

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## I N D E X

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## 1 F E D E R A L S T I P U L A T I O N S

2  
3 It IS HEREBY STIPULATED AND AGREED by and  
4 among counsel for the respective parties hereto, that  
5 the filing, sealing, and certification of the within  
6 deposition be waived.  
7

8 It IS FURTHER STIPULATED AND AGREED by and  
9 among counsel for the respective parties hereto that all  
10 objections, except as to the form of the question, shall  
11 be reserved to the time of the trial.  
12

13 It IS FURTHER STIPULATED AND AGREED that the  
14 within deposition may be sworn to and signed before any  
15 officer authorized to administer an oath, with the same  
16 force and effect as if signed to before the Court.  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 D E N N I S R. C O N N O L L Y, of 17 Philip  
2 Drive, Princeton, New Jersey 08540, after  
3 having been duly affirmed, was examined and  
4 testified as follows:

5 EXAMINATION

6 BY MS. ADAMS:

7 (Defendant's Exhibit 1, Liberty Mutual  
8 Insurance Company's Amended Notice of  
9 Deposition and Request to Produce Documents  
10 at Deposition, marked for identification.)

11 (Defendant's Exhibit 2, Diocese of Duluth  
12 Rule 29(a)(c) Expert Disclosure, marked for  
13 identification.)

14 Q. Mr. Connolly, thank you for coming here  
15 today. So we are here for your deposition. I know  
16 you've done this before, but if you have any questions,  
17 if you need to take a break for any reason, or if any  
18 of my questions you don't understand, just let me know  
19 and I will rephrase or repeat them.

20 A. That's fine.

21 Q. We have marked as the first deposition  
22 exhibit the notice for today's deposition. Are you  
23 here testifying in response to that deposition notice?

24 A. Yes.

25 Q. We've marked as Exhibit No. 2, a document

1 titled Diocese of Duluth Rule 29(a)(2) Expert  
2 Disclosure. Take a look at that document, please.

3 A. Okay.

4 Q. Is that your report attached to that  
5 expert disclosure?

6 A. Yes, it is.

7 Q. With respect to your name, it's  
8 Dennis Connolly with an O at the end; is that correct?

9 A. Yes.

10 Q. With respect to the expert disclosure,  
11 your name is misspelled; is that correct?

12 A. That's correct.

13 Q. But this is indeed you and your report?

14 A. It is. And my name is correctly spelled  
15 on my report.

16 Q. And that is your signature?

17 A. That is. If you count that as a  
18 signature.

19 Q. How were you contacted in this matter?

20 A. By phone call.

21 Q. And who called you?

22 A. To the best my recollection, Jared Zola.

23 Q. When did that occur?

24 A. I think it was January 7, but it was  
25 January of this year.

1 Q. Had you previously worked with Mr. Zola?

2 A. No.

3 Q. Had you previously worked with  
4 Mr. James Murray, his partner?

5 A. Not that I know of.

6 Q. When were you retained?

7 A. Shortly after that first call.

8 Q. What was the assignment that you were  
9 given during that first call?

10 A. I was assigned to respond to a claim by  
11 Liberty Mutual that certain policies issued to the  
12 Diocese of Duluth did not have aggregates -- excuse me,  
13 with regard to the question of the existence of  
14 aggregates for non-product liability cases.

15 Q. What contacts other than the initial  
16 contact with Jared did you have regarding this  
17 engagement?

18 A. Several phone calls and a meeting to  
19 prepare the report and then subsequently a meeting to  
20 prepare for this deposition.

21 Q. Did you ever speak to anybody at the  
22 Diocese of Duluth?

23 A. I did not.

24 Q. Other than counsel for the Diocese, did  
25 you speak anyone regarding this matter or your report?

1 A. No.

2 Q. Were you given any limitations on your  
3 assignment?

4 A. Well, I was supposed to respond to  
5 Liberty Mutual's allegations. But other than that, I  
6 was not limited.

7 Q. And you executed an engagement letter?

8 A. Actually, I don't recall. Sometimes I  
9 do, sometimes I don't.

10 Q. Do you agree with me that there is a  
11 difference between a commercial general liability  
12 policy and comprehensive general liability policy?

13 A. There is some difference.

14 Q. What is the significance of the use of  
15 the term "comprehensive" versus "commercial"?

16 A. Comprehensive general liability policies  
17 include all liabilities except those which are  
18 excluded. It is an invention of the early 1940's.

19 Q. Is it your opinion that comprehensive  
20 liability policies are effectively all risk policies;  
21 is that what you are saying?

22 A. No. What I am saying is the  
23 comprehensive general liability insurance policy, which  
24 was introduced in the 1940's was intended to reverse  
25 the practice which existed before of what I call the



1 cafeteria purchase of policies. So the company has a  
2 general liability policy including all liabilities  
3 unless that were excluded.

4 Q. And in 1986 that changed to a commercial  
5 general liability policy; is that correct?

6 A. I think so.

7 Q. Do you agree with me that there is a  
8 difference at least today, in today's market between  
9 personal injury and bodily injury?

10 A. Actually, some policies use personal  
11 injury to include bodily injury. So it's a -- personal  
12 injury has become a broader definition to encompass  
13 what was the traditional bodily injury, but also to  
14 include various personal injury torts.

15 Q. That would be under state coverage B of a  
16 commercial general liability policy?

17 A. Yeah.

18 Q. Back in the 1960s and early 1970s, did  
19 insurers use one term over the other?

20 A. Probably some did, dependent on the  
21 sophistication of the individual underwriter.

22 Q. So there was no unified standard term as  
23 to whether it would be bodily injury or personal injury  
24 back at that time?

25 MR. ZOLA: Objection to form.

1 MS. ADAMS: It was a terrible  
2 question.

3 Q. So back in the '60s and early '70s, would  
4 you see carriers using one term as opposed to the  
5 other?

6 A. Yes, I think so.

7 Q. Which one?

8 A. Different carriers use different terms.

9 Q. There was nothing standardized about it?

10 MR. ZOLA: Objection.

11 A. Well, I think it was standardized, but  
12 that didn't mean that people didn't do something  
13 outside of the standard.

14 Q. Which term was standardized?

15 A. I would think in the '60s to the best of  
16 my recollection, we used, at Liberty Mutual we used  
17 bodily injury rather than personal injury, bodily  
18 included what would now be called personal injury.  
19 Same thing when I was at Public Service.

20 Q. Can you go to your report which has been  
21 marked as Exhibit No. 2?

22 A. I can.

23 Q. And begin at the beginning. So on Page 1  
24 with respect to your introduction that first paragraph.

25 A. Yes.

1 Q. This sets forth your assignment.

2 A. Yes.

3 Q. Is it accurate that you were asked to  
4 examine or to provide an opinion regarding commercial  
5 general liability policies or should that be  
6 comprehensive general liability policies?

7 A. It actually should be the policies which  
8 were at issue between 1967 and 1973.

9 Q. Because you would agree with me that  
10 those were not commercial general liability policies?

11 A. I would have to see them again to look at  
12 them.

13 Q. We can do that. When you looked at the  
14 policies, were they attached to anything or did  
15 Mr. Zola give them to you?

16 MR. ZOLA: Objection.

17 A. Mr. Zola gave them to me.

18 Q. Were they attached to anything?

19 A. I think they were in a binder.

20 Or it's possible -- I simply don't  
21 recall, but they might have been attached to the  
22 answer.

23 Q. I am trying to give them to you in the  
24 form you looked at them.

25 A. Right.

1 (Defendant's Exhibit 3, Answers and  
2 Counterclaim of Liberty Mutual Insurance  
3 Company to the Second Amended Complaint,  
4 marked for identification.)

5 Q. Have you seen what has been marked  
6 as Exhibit No. 3 before?

7 A. Yes.

8 Q. Did you review this document in  
9 connection with preparing your report?

10 A. I did.

11 Q. Were you provided with a set of the  
12 policy information separate and apart from what has  
13 been attached to Exhibit No. 3?

14 A. I think so. I'm not positive. I just  
15 don't remember.

16 Q. Do you have a file with respect to this  
17 matter?

18 A. I do.

19 Q. And the documents that you reviewed, are  
20 they in that file?

21 A. They are.

22 Q. Did you bring that file with you today?

23 A. I did not.

24 MS. ADAMS: Jared, we asked  
25 for all the documents upon which he

1                   relied. I am assuming everything  
2                   that is in his folder is what we  
3                   have been provided.

4                   MR. ZOLA: Yes. There is  
5                   nothing that Mr. Connolly reviewed  
6                   that wasn't explicitly listed in the  
7                   report.

8                   A. There is no question?

9                   Q. The question that was before you was  
10                  whether or not they were comprehensive general  
11                  liability policies.

12                  A. That's what I said before, comprehensive  
13                  general liability policies, commonly known as CGL.

14                  Q. In the next paragraph of your report you  
15                  talk about expertise in liability insurance and  
16                  insurance underwriting. What is your experience with  
17                  respect to underwriting comprehensive general liability  
18                  policies?

19                  A. Well -- this is going to be a long  
20                  answer -- when I was with Liberty Mutual I was in a  
21                  department called claims legal. We were constantly  
22                  with underwriters and underwriters would come to us to  
23                  discuss how to underwrite. When there were policies  
24                  changes issued by the insurance services office, one of  
25                  my functions would be to explain those changes to

1 underwriters, in other words, how to apply the change  
2 to an underwriter.

3 When I was at Public Service Mutual  
4 Insurance Company, there were several major changes  
5 during that time period in the comprehensive general  
6 liability insurance policy. And my job aside from the  
7 litigation responsibilities was to explain how the  
8 policies worked and how they would apply with regard to  
9 underwriting.

10 Q. Was any of this experience prior to 1971?

11 A. Yeah.

12 Q. So ISO came into being effectually on  
13 December 10, of 1970; is that correct?

14 A. Yes. When I say -- hereafter when I  
15 refer to ISO, for example, when we talked before about  
16 the creation of the CGL, that was in creation of the  
17 combined joint effort of the two major rating bureaus  
18 at that time. And I think in 1966 they merged into  
19 ISO.

20 Q. So it's your understanding that two  
21 rating bureaus merged in 1966 to create ISO?

22 A. Yes.

23 Q. With respect to the next paragraph in  
24 your report. These are the policy --

25 A. Wait, the last question you asked me was

1 what was my experience in underwriting?

2 Q. As an underwriter, prior to 1971.

3 A. In part, in addition, I wrote a paper on  
4 product liability underwriting, which is actually  
5 general underwriting, though I wrote that paper in  
6 1977, I also spoke to and dealt with underwriters who  
7 were active in the '60s and '50s even.

8 Q. Were you an underwriter yourself?

9 A. At that time?

10 Q. Prior to 1971?

11 A. It depends on what you mean by an  
12 underwriter. I worked with underwriters. I helped in  
13 underwriter. I think that is underwriting. So I was  
14 doing underwriter. Did I have a card that said  
15 underwriter? No.

16 Q. You were not an underwriter for an  
17 insurance company?

18 A. I did not have a title underwriter. I  
19 was working on underwriting, which I considered to be  
20 underwriting.

21 Q. In the next paragraph there is a  
22 reference to the three historical and then you write  
23 commercial, but that should be presumably comprehensive  
24 general liability policies that are attached to Exhibit  
25 No. 3; is that correct? Those are the documents you

1 are referring to?

2 A. Yes.

3 Q. It says you personally reviewed those  
4 documents. Did anyone else review documents on your  
5 behalf?

6 A. No.

7 Q. No one else assisted you in the  
8 preparation of your report other than counsel?

9 A. That's correct.

10 Q. And then you also analyzed quote, certain  
11 other insurance policy information, close quote,  
12 relating to CNA?

13 A. Well, I analyzed the CNA policy.

14 Q. Did that have any bearing upon your  
15 opinion with respect to the Agricultural policies?

16 A. Yes.

17 Q. In what way?

18 A. It's what we call a bookend, that is to  
19 say it showed the kind coverage, so that you had a  
20 picture of the kind of coverage that existed in 1964  
21 through the inception of the CNA policy or Fireman's  
22 Fund policy in I think it was February of 1973.

23 Q. And that concept is referenced in your  
24 report?

25 A. Yes, it is.



1 Q. We will get to that later.

2 Who selected the documents that you were  
3 going to review in preparing your report?

4 A. I don't recall. I would have asked  
5 for -- I was given the opportunity to have anything I  
6 wanted, but for the purpose of this report it appeared  
7 to me that the policies themselves plus the complaint  
8 and the answer were sufficient to cover the issues.

9 Q. Did you analyze the policies that were in  
10 place prior to the Agricultural policies?

11 A. I did not. I have in the past analyzed  
12 policies issued to other dioceses prior to 1964. So I  
13 have a general familiarity with what some other  
14 dioceses policies --

15 Q. But my question is whether or not you  
16 analyzed the policies that were issued to the Diocese  
17 of Duluth prior to 1964?

18 A. And I answered no, but.

19 Q. I appreciate the "but," but the answer is  
20 no.

21 With respect to the issue of preliminary  
22 primer, you agree with me that insurance is a risk  
23 management tool?

24 A. Hey, it's got a lot of functions.

25 Q. It is a risk management tool?

1           A.     It is a risk management tool. It is a  
2 risk spreading tool. It's a risk sharing tool.

3           Q.     And then you move into a discussion with  
4 respect to automobile liability insurance and how it  
5 works.

6           A.     Right.

7           Q.     You agree with me that that's not  
8 relevant to your opinion here?

9                     MR. ZOLA: Objection to form.

10          A.     No, I don't agree. I think that in order  
11 to explain to the trier of facts how insurance works,  
12 because I noted that most people don't understand and  
13 have no reason to know how insurance works in the  
14 commercial context, so it's important to distinguish  
15 between the kind of insurance that many people are  
16 somewhat familiar with, auto or homeowners versus  
17 commercial.

18          Q.     Have you analyzed the claims that have  
19 been made against the Diocese of Duluth?

20          A.     No, I've analyzed other archdiocese  
21 claims.

22          Q.     But you have not analyzed the ones  
23 against the Diocese of Duluth?

24          A.     That's correct.

25          Q.     And they are not automobile claims; do

1       you agree with that?

2               A.       I do, absolutely.   Maybe there is an  
3       automotive claim that is not a relevant matter.

4               Q.       With respect to insurance being a risk  
5       spreading device, how is that relevant to your opinion  
6       in this matter?

7               A.       Well, it explains the operations of  
8       insurance.   How insurance works, how underwriters work.  
9       It is -- sometimes people think it is risk bearing, but  
10      when the insurance industry is functioning properly,  
11      it's risk spreading.   So if you take -- you know you  
12      are going to have some losses and you hope you don't  
13      have too many, but you spread that risk.   Just like in  
14      auto, not everyone has an accident, but everybody is  
15      paying a portion, part of which pays for that accident.

16              Q.       So if a company is making a profit, they  
17      are presumably doing a good job at risk spreading?

18                      MR. ZOLA:   Objection.

19              A.       Well, it depends on what you mean by  
20      profit.   The idea -- the fundamental idea in the  
21      insurance industry is to operate with an underwriting  
22      gain.   But profit is also built in so that the  
23      insurance industry builds into its rates a profit  
24      margin, particularly at this time.   And then, in  
25      addition, the insurance industry can make -- as I

1 pointed out -- money in other ways, which would be  
2 profitable including investment income, for example.

3 Q. So you don't understand the concept  
4 underwriting profit?

5 A. I do.

6 Q. So my question to you was: If a company  
7 is making an underwriting profit, then are they are  
8 spreading their risk? Are they using the risk  
9 spreading device you are talking about in Paragraph 3?

10 A. If they made an underwriting profit, then  
11 their underwriting-loss ratio would be positive and  
12 they would be successful in spreading risk. So that  
13 they would pay the insureds and bill the insureds and  
14 they would spread it out.

15 Q. And if they had a loss --

16 A. Underwriting loss.

17 Q. Correct. Then they may not be doing such  
18 a great job at spreading risk?

19 A. That's true. They may do other things to  
20 try to improve. For example, when I was at  
21 Liberty Mutual one year we had a -- I noticed on the  
22 claims files all of them stamped with minus 3 percent.  
23 And the idea there was that the insurers, the claims  
24 people were supposed to pay less than 3 percent of what  
25 they had previously been paying on claims. That is a

1 way of increasing underwriting profit.

2 Q. With respect to risk sharing devices, you  
3 are considering quota arrangements; is that what you  
4 are talking about?

5 A. No. I am talking about the general  
6 operation in the insurance industry.

7 Q. Did Agricultural --

8 A. There also would be quota share of  
9 particular policies. But that's -- in here that's not  
10 what I'm talking about.

11 Q. The Agricultural policies do not fall  
12 into the risk sharing category; is that correct?

13 A. No. All insurance policies fall into  
14 risk sharing. In other words, Agricultural insured the  
15 Diocese and I'm sure they insured lots of other things.  
16 They are there to spread the risk amongst all of those.  
17 And you are sharing risk.

18 Q. So your report says that risk sharing is  
19 when you have a group or pool of insurance companies  
20 that combine to share the risk.

21 A. That's a certain kind of risk. Where is  
22 that?

23 Q. That would be the second sentence in  
24 Paragraph 4.

25 A. That references to a different kind of

1 risk sharing. That's where as you are probably  
2 familiar you might have a high-access layer with a  
3 quota share out of a \$10 million layer. There are two  
4 insurers each taking 50 percent.

5 Q. I think this is talking about a tower of  
6 insurance.

7 A. That's one kind. There also are pools of  
8 insurance, for example, the American Nuclear Insurance.  
9 It's a pool. There are also fair plan pools, assigned  
10 risk pools. But also in history, the whole operation  
11 is dependent on risk share.

12 Q. None of those devices are relevant to the  
13 Agricultural policies; is that correct?

14 A. They are relevant -- well, first off,  
15 risk sharing is relevant in the insurance industry.  
16 That's what I am talking about.

17 Q. But you are not talking about anything  
18 specific to the Agricultural policies. That is all I  
19 am trying to establish.

20 A. Well...

21 Q. I mean, you have spent pages talking  
22 about the background as you see it with respect to  
23 insurance. But that does not bear directly upon your  
24 opinion as to whether the Agricultural policies did or  
25 did not have an aggregate limit for non-products bodily

1 injury claims?

2 MR. ZOLA: Objection to form.

3 A. I think that these are parts which help a  
4 trier of fact understand how the insurance industry  
5 operates. I am not suggesting that Liberty Mutual or  
6 Agricultural were a part of a pool or quota share.

7 Q. You understand that Liberty Mutual did  
8 not issue the Agricultural policies?

9 A. That's correct.

10 Q. You understand that Liberty Mutual had  
11 nothing to do with the Agricultural policies?

12 A. Well, I don't know that. I know that the  
13 policies that were issued were Agricultural.

14 Q. Do you believe that Agricultural was a  
15 subsidiary or somehow an affiliate of Liberty Mutual  
16 between 1964 and 1973?

17 A. No --

18 MR. ZOLA: Calls for a legal  
19 conclusion.

20 A. I don't know. My understanding is that  
21 Agricultural issued the policies. I don't know if  
22 there was a relationship at that time or whether a  
23 relationship arose later on between Agricultural and  
24 Liberty Mutual.

25 Q. Did you do any analysis with respect to

1       Agricultural Insurance Company?

2               A.       No.

3               Q.       Do you know where it's domiciled?

4               A.       I think I saw it on its policies, but,  
5       no, I don't.

6               Q.       Do you know what, if any, rating bureau  
7       it belonged to?

8               A.       No. I noticed that I believe it was  
9       using an ISO form, so I suppose it belonged to ISO.

10              Q.       That would be after December 10, of 1970.  
11       Prior to December 10, of 1970, do you know what, if  
12       any, rating bureau Agricultural Insurance Company  
13       belonged to?

14              A.       I think it was using -- at that point, I  
15       think it was still using the ISO CGL policy form.

16              Q.       So ISO doesn't come into existence until  
17       December 10, of 1970.

18              A.       When I talk about ISO, rather than break  
19       it into the ancient -- the ancient National Fire  
20       Writers and the other rating bureau, I did not do that.  
21       So I don't know which one they belonged to. But they  
22       were using a form that was a combined form of, as I  
23       mentioned before, the two major rating bureaus. There  
24       is also a third rating bureau.

25              Q.       There are actually over 200 rating



1       bureaus, right?

2               A.       Right. The big ones were the -- the ones  
3       that became ISO.

4               Q.       Which were the two rating bureaus that  
5       you identified?

6               A.       Yes.

7               Q.       You can go to Paragraph 9 of your report.  
8       And read the first sentence to yourself, please.

9                       Have you spoken to anyone from the  
10       Diocese of Duluth with respect to their insurance  
11       program from 1964 to 1973?

12              A.       No.

13              Q.       Do you have any basis to make this  
14       statement with respect to the Diocese of Duluth?

15              A.       That most businesses brought insurance?  
16       Are you talking Paragraph 9?

17              Q.       Do you know whether the Diocese of Duluth  
18       maintained the types of insurance coverage that you  
19       have listed in the second sentence; property insurance,  
20       employee dishonesty theft insurance, employer  
21       liability, commercial general liability insurance, or  
22       directors and officers insurance?

23                      MR. ZOLA: Objection to form.

24              A.       Well, what we do know is they purchased  
25       comprehensive general liability insurance. Whether

1       they would have the other types of insurance, property  
2       insurance -- property insurance, for example, would be  
3       first-party insurance and I don't know whether they did  
4       or they didn't.

5               Q.       On Page 5 of your report, you begin a  
6       discussion of a process in which insurance policies are  
7       purchased; is that right?

8               A.       Correct.

9               Q.       And this is just one way that you set  
10      forth in Paragraphs 10 through 13 in which insurance  
11      can be purchased; is that correct?

12              A.       Well, I think I made it broad enough so  
13      that it would encompass different kinds of insurance  
14      purchased. Broadly speaking, insurance is purchased  
15      either through directly as in a direct writer or  
16      through an agency writer.

17              Q.       Do you know how the Agricultural  
18      Insurance Company how they did their underwriting?

19              A.       I do not. How they did their  
20      underwriting? No.

21              Q.       Do you know if the Diocese contacted an  
22      insurance agent?

23              A.       I do not.

24              Q.       Do you know if the Diocese filled out an  
25      insurance application?

1 MR. ZOLA: Ever?

2 Q. Between 1964 and 1973?

3 A. I do not.

4 Q. Have you ever seen an Agricultural  
5 Insurance Company application from the 1960s or 1970s?

6 A. Not that I recall. But that does not  
7 mean that I did not.

8 Q. But you just can't remember.

9 A. Correct. I have seen thousands of  
10 applications.

11 MR. ZOLA: As we've noted in  
12 e-mails, once Liberty Mutual  
13 produces the documents, if there are  
14 applications in there, we are going  
15 to show them to our experts and the  
16 bases for their opinions are going  
17 to be updated and we are not  
18 producing the witnesses for another  
19 deposition after that.

20 MS. ADAMS: And as we have  
21 repeatedly informed the Diocese  
22 there are no such documents.

23 MR. ZOLA: So you are asking  
24 the witness if he has seen documents  
25 that don't exist?

1 MS. ADAMS: We do not have  
2 possession, custody or control of  
3 any such documents.

4 My question to the witness is  
5 in Paragraph 11, he discusses  
6 insurance applications. And was  
7 whether or not the Diocese had  
8 filled out an insurance application.  
9 The fact that Liberty Mutual does  
10 not presently have a copy of it does  
11 not mean that one did not exist at  
12 some time.

13 MR. ZOLA: Is that a  
14 question?

15 MS. ADAMS: It's a statement  
16 to you.

17 Q. Is it possible that with respect to the  
18 Diocese of Duluth, that an Agricultural agent actually  
19 issued the policy?

20 A. Well, an agent would be acting for the  
21 insurer if it issued the policy.

22 Q. Right. A field agent, an Agricultural  
23 field agent could have issued --

24 A. Right. Or a general agent --

25 Q. -- the policy?

1           A.     -- or something of that sort.  It's  
2     entirely possible.

3                     I would, just to go back to the  
4     application.  Applications were generally fairly  
5     similar and drafted usually by brokers and then used by  
6     applicants.

7           Q.     When you use the term "broker," are you  
8     meaning a field agent or are you talking about  
9     something different?

10                    MR. ZOLA:  Objection to form.

11           A.     I'm talking about a broker, but also I  
12     broadened it -- good point -- I broadened it to a  
13     producer.  A producer is a term that includes both  
14     agents and brokers.

15           Q.     Do you know if the Diocese had a broker  
16     between 1964 --

17           A.     I do not.

18           Q.     -- and 1973?

19                    Other than the insurance policies that  
20     you've examined attached to Exhibit No. 3, and the CNA  
21     information, do you have any information regarding the  
22     Diocese of Duluth's insurance program from 1964 to  
23     1973?

24           A.     No.  Other than a general background with  
25     regard to a diocese and the types of insurance they

1 would buy.

2 Q. Are you familiar with the term "dailies"?

3 A. Yes.

4 Q. And once a field agent would issue a  
5 policy, they would then send the dailies to the  
6 carrier?

7 A. The daily would be a confirmation, yeah.

8 Q. In Paragraph 12, because you go through  
9 the process of underwriting, you describe the point in  
10 time in which an insurance binder is issued.

11 A. Yes.

12 Q. Have you seen a binder that was issued to  
13 the Diocese of Duluth?

14 A. I have not.

15 Q. Do you know if at the time the insurance  
16 policy was purchased the Diocese of Duluth, and this  
17 would be between 1964 and 1973, whether or not or when,  
18 I should say, the premium was paid?

19 MR. ZOLA: Objection to form.

20 A. I think that one of the policies  
21 required -- two of the policies I thought required  
22 advanced payment of premium. When we get to the  
23 policies we can verify.

24 Q. So that takes us to underwriting profits.  
25 How insurance companies make money. And we talked

1 about this a little bit before. But can you describe  
2 the relationship between operating ratios and profit?

3 A. Operating ratios include a profit, but  
4 they do not include investment income. So you can have  
5 a underwriting profit, that is to say you have written  
6 insurance policies, generally speaking, at the time we  
7 are talking about the expense ratio is created by the  
8 rating bureau, so in between 23 to 35 percent. So if  
9 you wrote a dollar of premium and you paid out anything  
10 other than -- taking 35 percent -- if you paid out 60  
11 percent, then you hit a 5 percent underwriting profit.  
12 But there is profit in an expense ratio so you'd have  
13 double profit. And then if you made money on investing  
14 income, even more money.

15 Q. Is that 5 percent?

16 A. In the expense ratios.

17 Q. Is that correct?

18 A. To the best of my recollection, yes.

19 Q. What if your expense ratio was 105  
20 percent or your operating ratio -- strike that.

21 If your operating ratio was 105 percent?

22 A. Then you would be -- assuming a 5 percent  
23 profit in the expense ratio and assuming your expense  
24 ratio was as the ISO or rating bureau filings went,  
25 then you would be breaking even, but then you would

1 have investment income in any case.

2 Q. You are not doing so great at 105  
3 percent?

4 MR. ZOLA: Objection.

5 A. The object is not to do 105 percent. But  
6 as John Cox once said, he was the president of INA, he  
7 said, I can have an 11 percent loss ratio and still  
8 make money. Of course that was during a period of  
9 extreme inflation.

10 Q. And if you are at 50 percent, then,  
11 obviously, you are doing much better.

12 MR. ZOLA: Objection.

13 A. The idea is to keep your loss ratio up.

14 MR. ZOLA: Belated objection  
15 to form. If you would just give me  
16 one second to make an objection  
17 before you answer, I would  
18 appreciate it. I wanted to make it  
19 contemporaneous, but.

20 Q. If you have a lower operating ratio, then  
21 you might be able to, as an insurance company, do other  
22 things with your capital, say put more in investment  
23 income. You might expand into other areas; is that  
24 correct?

25 MR. ZOLA: Objection.



1           A.     If you were -- the idea is, in fact, to  
2     do better with the expense ratio, because then you can  
3     put the money into your surplus as well as other  
4     things. For example, The Hartford decided not to buy a  
5     helicopter, Aetna did buy a helicopter. So you can do  
6     things with the surplus when it arises. But if you can  
7     build your policy over surplus, then you can build a  
8     bigger insurer.

9           Q.     And if the opposite is the case, if you  
10    have a very high operating ratio as an insurance  
11    company, you might constrict someone on underwriting;  
12    is that correct?

13          A.     Sure. In 1984, the expense, the loss  
14    ratio for the insurance industry was 132 percent. And  
15    in 1985, it was 150 percent. That meant that the  
16    policyholder surplus went down. So the insurance  
17    industry could not write as much insurance as they  
18    wanted or as the public wanted, which is why there were  
19    so many hearings on the availability of insurance.

20          Q.     And that led to a hardened market.

21          A.     Yeah, absolutely.

22          Q.     And it led to a narrowing of coverage; is  
23    that right?

24          A.     That's correct.

25          Q.     In Paragraph 17, I just want to

1 understand how this works. Resisting claims is a way  
2 to make money?

3 A. Yes.

4 Q. Or is it a way to reduce your exposure?

5 A. It is a way to reduce exposure. But it  
6 is -- reducing exposure makes money. If you don't pay  
7 claims or you underpay claims, then you will reduce  
8 your loss ratio. That's why Liberty Mutual in 1970 or  
9 somewhere before I left had that 3 percent reduction  
10 request. Sure. I mean, it's quite simple. You  
11 tighten on paying claims or you delay paying claims.  
12 If you delay paying claims, even if you've agreed on an  
13 amount, but you hold it, you get investment income on  
14 what you are holding.

15 Q. Did Agricultural do any of that?

16 A. I don't know.

17 Q. In Paragraph 18 of your report, are you  
18 describing today's market or are you describing the  
19 market back in the '60s and early 1970s?

20 A. I am describing the '60s and '70s. And,  
21 by the way, generally speaking, I think it's still  
22 true.

23 Q. So in Paragraph 20 --

24 A. Having them back to back means I get to  
25 the pages faster.

1           Q.     -- there are two fundamental obligations  
2     and it's effectively, what, the duty to defend and the  
3     duty to indemnify?

4           A.     Yes.

5           Q.     And buried in the duty to defend or part  
6     of the duty to defend is also supplementary payments,  
7     correct?

8                     MR. ZOLA:  Objection --

9           A.     That's the way --

10                    MR. ZOLA:  -- to form.

11          A.     That is a way of paying defense costs.

12          Q.     So it's your opinion the defense costs  
13     fall within supplementary payments?

14          A.     Yes.  Or they may exist independently.  
15     Different policies do it in different ways.

16          Q.     Right.  And so in the second sentence  
17     here you say, "First, subject to the terms and  
18     conditions of the particular CGL policy..."

19                    Presumably because all policies are  
20     different; is that right?

21          A.     Well, all --

22                    MR. ZOLA:  Objection to form.

23          A.     Not all policies are different.  Most  
24     policies follow a format.  Some policies are different.

25          Q.     So what do you mean by this, "Subject to

1 the terms and conditions of the particular CGL policy"?

2 A. Well, what I mean by that is you have to  
3 look at the policy, that although there are generalized  
4 forms, an individual carrier might file their own  
5 forms. As we discussed before, some policies use  
6 personal injury, some use just bodily injury. So there  
7 are different kinds of policies. And sometimes there  
8 are policies which are -- though they are rare, there  
9 are some policies that are what we call manuscript.

10 Q. The one real limitation on a carrier's  
11 ability to issue a policy with respect to terms and  
12 conditions is approval by the regulators. In other  
13 words, if a regulator will approve a filing, then a  
14 carrier can use it.

15 MR. ZOLA: Objection.

16 A. Generally, although and, for example, in  
17 New York, a regulator might slip up and allow a policy  
18 to cover punitive damages. The policy still would not  
19 cover punitive damages because it's a state public  
20 policy not to cover punitive damages.

21 Q. Right. As a matter of law you can not  
22 insure punitive's in New York.

23 A. Correct.

24 Q. But as long as back in the '60s and early  
25 '70s the regulators were approving the forms. The

1 carriers could use the forms in that jurisdiction?

2 A. That's correct. Though, just to be  
3 clear, the rating bureaus filed forms and then  
4 individual companies might vary the form and file it  
5 themselves.

6 Q. The rating bureaus filed the forms on  
7 behalf of the companies?

8 A. That's correct. But a company could file  
9 its own form.

10 Q. So it could do it either way?

11 A. Or both.

12 Q. Twenty-one. With respect to the third  
13 sentence here, I mean, are you suggesting that the  
14 single coverage period is the result of lawsuits filed  
15 against religious organizations?

16 A. What I was suggesting is that sometimes  
17 policies for certain kinds of exposures were written on  
18 what was called a claims-made basis. So that sometimes  
19 you would have a single year. On the other hand,  
20 sometimes there were policies written on the current  
21 basis so that you would have coverage over tens of  
22 years.

23 Q. I'm certainly familiar with claims  
24 re-policies. So respect to the little one you have,  
25 the "provide coverage during a single coverage period,"

1       you are referring to claims-made coverage?

2               A.       No.

3                       MR. ZOLA:   Objection to form.

4               A.       Actually, what I'm referring to there is  
5       that during a single period you might buy policies in a  
6       tower.

7               Q.       And then little two, you say,  
8       "...cumulatively, provide tens, or even hundreds, of  
9       millions of dollars..."

10                      What do you mean by cumulatively?

11              A.       In other words, if you -- well, there we  
12       would be talking about policies where there is a -- or  
13       incidences in which there is a continuous injury. In  
14       that case, if you purchased 10 million in year one, 10  
15       million in year two, 10 million in year three, you  
16       could end up with \$30 million worth of coverages  
17       arising from the same event.

18              Q.       So certain environmental claims, for  
19       example, might fall within that category?

20              A.       Yes. And certain product liability  
21       claims.

22              Q.       Bodily injury claims, do not fall within  
23       that category?

24                      MR. ZOLA:   That calls for  
25       legal conclusion.

1           A.       That is not my understanding. I believe  
2       that asbestos claims, for example, capture years and  
3       years and years of coverage and many drug claims do the  
4       same.

5           Q.       How about -- going back to your example,  
6       an automobile accident; is that cumulative?

7           A.       That is generally not. But it could be.  
8       You could have an accident one year causing injury  
9       which arises in subsequent years.

10          Q.       And if that were to be the case, so if  
11       you have an accident in year one and you broke your leg  
12       and then year two and three the leg got worse leading  
13       to another injury, it's your opinion that all three of  
14       those policies would apply?

15          A.       No, that's not what I said.

16                   MR. ZOLA: Objection to form  
17       and calls for a legal conclusion.

18                   MS. ADAMS: With respect to  
19       the legal conclusion. I just want  
20       to be clear that he is testifying as  
21       to the interpretation of policy,  
22       which is a legal conclusion.

23                   THE WITNESS: I am testifying  
24       to the custom and practice.

25                   MS. ADAMS: Yeah, actually

1 not.

2 Q. So the answer is no?

3 A. With regard to the auto?

4 MR. ZOLA: Wait. Wait.

5 Wait.

6 Nancy, with respect to your  
7 testimony, I fully disagree with  
8 your characterization of what  
9 Mr. Connolly is here to testifying  
10 about.

11 And my objection to the legal  
12 conclusion is that you are giving  
13 him hypotheticals that I am not even  
14 sure a seasoned coverage lawyer  
15 could answer without knowing more,  
16 such as which state are we talking  
17 about. In a vacuum, we are talking  
18 about auto claims, whether they  
19 trigger multiple periods? What are  
20 we talking about? I objected. I  
21 let him answer. He answered so we  
22 can move on.

23 Q. My question is simply whether or not the  
24 use of the second section in here with respect to the  
25 cumulatively providing tens or hundreds of million of



1 dollars in insurance limits is applicable to the bodily  
2 injury claims that have been asserted against the  
3 Diocese.

4 MR. ZOLA: That wasn't the  
5 question you had. If you want to  
6 ask that --

7 A. Well, I think that is actually a legal  
8 conclusion --

9 Q. Then you don't have to answer it.

10 So moving on. Paragraph 22, I think is  
11 an example of what you are talking about on the  
12 cumulative with respect to asbestos claims.

13 MR. ZOLA: Is that a  
14 question?

15 MS. ADAMS: Yes.

16 MR. ZOLA: Objection to form.

17 A. Yes. By the way, I don't rule out the  
18 possibility that the bodily injury claims asserted in  
19 the archdiocese-type claims might also be cumulative.  
20 That is, I suppose, a question of law, but I can  
21 conceive of that being a cumulative.

22 Q. With respect to the second sentence  
23 there, it starts with, "For example, in an individual  
24 is diagnosed...", and you continue on with the various  
25 policies that would apply, that is also a legal

1 conclusion depending upon what law applies?

2 A. Well, that's also true. It's also a  
3 custom and practice.

4 MS. ADAMS: I think just  
5 before we move on we have been going  
6 for an hour. I'd just like to take  
7 a short break.

8 (Brief Recess.)

9 Q. So we are on Paragraph 23, beginning of  
10 the section called "Aggregate Limits." And in this  
11 section you state that, "This is important to limit the  
12 liability of an insurer in products liability where a  
13 product with a defect may injure thousands of people."

14 Did I read that correctly?

15 A. Correct.

16 MR. ZOLA: Where are you? I  
17 am not objecting. I just didn't see  
18 it.

19 THE WITNESS: She is on the  
20 last sentence of 23.

21 MS. ADAMS: Are you sure  
22 you're not objecting?

23 Q. You agree with me that it's also true  
24 that it's important to have aggregate limits for bodily  
25 injury claims?

1           A.     Not necessarily. It's not the same  
2     thing, product liability. Product liability has  
3     historically had aggregate limits.

4           Q.     I appreciate that's your opinion. My  
5     question is: Today are policies issued with the  
6     aggregate limits on bodily injury non-products cases?

7           A.     Today?

8           Q.     Today.

9           A.     I don't know.

10          Q.     You don't know if --

11          A.     As of today, no, I don't.

12          Q.     Are you familiar with any of the policies  
13     issued after 1986 by ISO?

14          A.     Yes.

15          Q.     Do you know if any of those policies  
16     provide for aggregate limits for non-products bodily  
17     injury claims?

18          A.     I don't recall.

19          Q.     In the next paragraph, 24, again, your  
20     last sentence begins with "It is a long-standing custom  
21     and practice in the liability insurance industry...",  
22     could you please read that sentence to yourself?

23          A.     Yes.

24          Q.     Do you agree with me that in the 1960s  
25     there were hundreds of different rating bureaus?

1           A.     Not that I recall. There were major  
2 rating bureaus.

3           Q.     You testified that there were two?

4           A.     Two major rating bureaus.

5           Q.     Can you describe the marketplace in the  
6 1960s and 1970s with respect to rating bureaus?

7           A.     I don't know what the question means.

8           Q.     Can you describe the role of rating  
9 bureaus in the 1960s and 1970s?

10          A.     Rating bureaus were under  
11 McCarran-Ferguson were allowed to pull together  
12 information to develop common forms. That's what they  
13 did. So the industry was using, generally speaking,  
14 common forms. They had used common forms before 1943,  
15 but there was a antitrust case which prohibited that.  
16 And then in 1943 or '44 McCarran-Ferguson was enacted  
17 which allowed rating bureaus to corporative. It has  
18 the advantage that policy holders buy policies and  
19 understand the general terms of the policy. So when  
20 you buy an automobile policy, for example, you don't  
21 actually have to read it.

22          Q.     How were the bureaus geographically  
23 arranged back in 1960s and 1970s?

24          A.     The major bureaus were countrywide and  
25 then there were individual bureaus that were local.

1 For example, there was an independent mutual bureau,  
2 which was in Chicago. This is my recollection.

3 Q. What reference material are you relying  
4 upon with respect to that sentence, "It is a  
5 long-standing custom and practice in the liability  
6 insurance industry for insurance companies to sell  
7 primarily CGL insurance using the standardized  
8 insurance forms and provisions developed by the rating  
9 bureau and later the ISO?"

10 MR. ZOLA: Objection to form.

11 A. Yeah. I'm not quite sure, if you state  
12 it again, I will answer it. I am not quite sure what  
13 you are getting at.

14 Q. What is your authority or support for  
15 that proposition?

16 A. Let's see. Years of working with the  
17 rating bureaus, ISO in particular. My historical  
18 experience with the AIA, which was a separation from  
19 The National Fire Underwriters, one of rating bureaus.  
20 The fact that I testified on this issue and had to  
21 learn about it from various people. And I believe it's  
22 covered in my underwriter paper in 1979, which I wrote  
23 for Congress regulators. It was used as a training  
24 manual. It's discussed.

25 Q. What is your support and authority for

1       that statement with respect to 1964 to 1973?

2                       MR. ZOLA: Asked and  
3                       answered.

4               A.       As I said, I had to testify about that.  
5       And so I had to learn about what the conditions were.

6               Q.       When did you testify about that?

7               A.       Oh, you've got my CV somewhere. But I  
8       testified on practically every issue.

9               Q.       I believe your CV is attached to that  
10      report?

11              A.       Not this one. Oh, yes, this is. It's  
12      two-sided reducing the paper.

13                     Certainly there was one in 1979 -- oh,  
14      I'm sorry, Page 34 of my CV.

15              Q.       I'm talking about prior to 1973.

16              A.       Prior to 1973 -- well, you misunderstood  
17      my answer. I didn't say that I testified prior to  
18      1973. What I said was that I had to testify on behalf  
19      of the insurance industry including the history of how  
20      the insurance industry operates. And those items of  
21      testimony, some, but not all of which would have  
22      included discussions of that sort of issue, are listed  
23      on Page 34 and 35. Although, it's not an inclusive  
24      list of my testimony.

25              Q.       Would you agree that today ISO has over

1 10,000 different active forms?

2 A. Well, ISO is completely different now  
3 than it was ever since the industry antitrust cases, a  
4 totally different company.

5 Q. Right. I agree with you.

6 My question is: Today, you agree with me  
7 that ISO has over 10,000 active forms?

8 A. No, that I don't agree because I don't  
9 know.

10 Q. Okay. You don't know?

11 A. No.

12 Q. Back in 1964 to 1973, do you know how  
13 many forms and endorsements various rating bureaus had?

14 A. Probably quite a few, but I don't know a  
15 number.

16 Q. With respect to this proposition, this  
17 Paragraph 24, you are suggesting that there is a  
18 standardized policy form and provision?

19 A. Yes.

20 Q. What is that form?

21 A. Well, we have already been talking about  
22 it. But the standard form was the comprehensive  
23 general liability insurance policy, which is as I said  
24 before was created in 1941, and then could be  
25 individually tailored sometimes, but then you would

1 have to file as we discussed before, you would have to  
2 file an amendment.

3 Q. I'm just trying to understand this  
4 sentence. So it's your position that a CGL insurer,  
5 such as Agricultural, would have had to use a 1941 form  
6 or a 1955 form or a 1966 form?

7 A. It would have used --

8 MR. ZOLA: Objection to form.

9 A. It would have used the then-current  
10 comprehensive general liability insurance policy.

11 Q. Was it required to do that?

12 A. Unless it had filed another form, it  
13 would have been required to use that. And it would not  
14 have fit the business model of providing a policyholder  
15 with a known quantity.

16 Q. Between 1964 and 1973, do you know if  
17 Agricultural -- or actually strike that.

18 Prior to 1964 through 1973, do you know  
19 if Agricultural had filed another form so that it could  
20 deviate from the 1941, 1955 or 1966 forms?

21 A. No, I do not.

22 Q. It is possible that Agricultural did  
23 that; is that correct?

24 A. I don't know.

25 Q. But it's possible Agricultural could have



1       made a filing with the regulator?

2               A.     It is.

3               Q.     And if Agricultural made such a filing  
4       with a regulator, then it would not have had to follow  
5       one of these standardized forms?

6               A.     It would not.   However,  
7       commercially-speaking it would be very odd to not do  
8       so.

9               Q.     Do you know if Agricultural made any such  
10      filing?

11              A.     I do not.   And, furthermore, the policies  
12      that I have seen look like they are standard CGL  
13      policies.

14              Q.     So the policy that the Diocese provided  
15      is a most -- Part 2 or Provision 2, is the 1964 to 1973  
16      policy?

17              A.     As far as Agricultural that is, as I  
18      understand it, the most complete policy.

19              Q.     So that is the 1955 policy?

20              A.     Form?

21              Q.     Yes.

22              A.     I think so.

23              Q.     Twenty-five.   "When companies have  
24      losses, they report to ISO."   What do you mean by that?

25              A.     Well, losses -- the rating bureaus create

1 rates for an insurance. So, for example, for product  
2 liability there are rates. If you have a machine tool,  
3 and underwriter can look at ISO ratings and will find  
4 some industrial code which encompasses, to the best of  
5 the underwriter's ability, machine tools. And that  
6 will give a rate. Now, that rate may be a vague rate.  
7 It might be what is called an A rate, which basically  
8 is the ISO doesn't have enough information to make a  
9 concrete rate. If, on the other hand, there is a kind  
10 of product that has a lot of losses and there is a lot  
11 of concrete information about it, then they may find a  
12 specific rate. And the underwriter can use that rate  
13 or modify it in various ways.

14 Q. A company doesn't have to rely on the ISO  
15 information, correct?

16 MR. ZOLA: Objection to form.

17 A. It is correct that they can develop a  
18 rate of their own. There is -- you know, the problem  
19 particularly with general liability is that you don't  
20 have enough concrete data. So, for example, on  
21 automobiles, you can --

22 Q. I don't think we are supposed to talk  
23 about automobiles.

24 A. I was trying to explain rating.

25 Q. That was a sidebar.

1           A.     Notwithstanding your sidebar, I was  
2     trying to explain how rating works. So, for example,  
3     State Farm, that's the largest auto insurer, has enough  
4     auto data so they can tell whether red cars are more  
5     likely to have accidents or not. With respect to  
6     product and commercial liability, there just isn't that  
7     kind of information. So ISO is the best depository for  
8     information. So when an insurance company has losses,  
9     it turns it into ISO. ISO then converts that into --  
10    cumulates that and turns it into rates.

11           Q.     Is the red car State Farm example a  
12    hypothetical or do you know that?

13           A.     It used to be true.

14                   (Off the record.)

15           Q.     So with respect to this Paragraph 25, you  
16    are again referring to ISO. I want to make sure we are  
17    clear in terms of the nomenclature we are using here.  
18    Because ISO doesn't come in existence until December  
19    10, of 1970. When you are using the term "ISO" here,  
20    what are you referring to?

21           A.     When here I am referring to ISO but also  
22    the predecessors of ISO operated in the same way.  
23    Remember, I worked for AIA, which was a splinter or a  
24    breakoff from one of the rating bureaus. That was  
25    required by antitrust action.

1 But, basically, the insurance industry is  
2 allowed to coordinate in ways that other industries  
3 would not be able to do in order to create common forms  
4 and also to develop rates.

5 Q. So I don't know if you answered my  
6 question or not. With respect to Paragraph 25, are you  
7 referring to both ISO and the rating bureaus pre-ISO?

8 A. Yes. The operation of the rating  
9 bureaus, in general.

10 Q. Paragraph 26, so you just referenced an  
11 A rate. So if you could not get a rating or a rate  
12 from the manual, you could call the insurance company  
13 and get an A rate; is that correct?

14 A. I don't think that's correct.

15 Q. Okay.

16 A. What I meant was the insurance company  
17 would get a manual from ISO and it might list, for  
18 example, turkey poppets. There are so few turkey  
19 poppet cases that they are statically unreliable. So  
20 ISO would put an A. So when 3M was sued by a woman who  
21 swallowed a turkey poppet, that was the only known  
22 turkey poppet case. That is not a basis to form a rate  
23 that would be useful. So, in effect, ISO is saying we  
24 don't have a specific rate for turkey poppet, so here's  
25 an A, here's what we think it might be or you might

1 want to use a similar industrial code.

2 Q. Did each company have its own rating  
3 manuals?

4 A. They got their rating manuals from ISO  
5 and then they might modify them if they had a  
6 particular expertise. So, for example, Liberty Mutual,  
7 had certain -- when I was there, had certain business  
8 areas where they got a lot of their own information.  
9 So we underwrote federated and allied and almost every  
10 department store in the United States.

11 Q. So everybody didn't ISO. Each company  
12 had its own rating manual?

13 A. Each company that was a member of ISO had  
14 an ISO rating manual, but they were enabled to or  
15 entitled to change it, but they had to report. When  
16 they reported their losses, they had to report what  
17 they were doing in order to get consistent rates. You  
18 want to make sure the rates would be based on the kind  
19 of policy that was issued, whether it had an aggregate  
20 or no aggregate. And then if you were using --  
21 different type, using product liability, if you had  
22 policies, you had 99.9 percent of policies had an  
23 aggregate for product liability. But if someone was  
24 writing a policy without an aggregate for product  
25 liability and then started reporting, that information

1 would create inaccuracy in the rating.

2 Q. I appreciate the end of that answer. But  
3 that doesn't mean an insurance company couldn't issue a  
4 policy with an aggregate on a non-product bodily injury  
5 basis?

6 MR. ZOLA: Objection to form.

7 A. That's correct. I didn't say that.

8 Q. So the company could have done that?

9 A. A company could have, though some would  
10 be an odd duck.

11 Q. And I think, as you said, the insurance  
12 company can work with the rating bureaus such that they  
13 could deviate from a base rate.

14 A. Is that a question?

15 Q. Yeah. Is that correct?

16 A. I think they could, but I would be very  
17 surprised for various reasons if that would happen.  
18 You could if you had enough information. As I said,  
19 Liberty had a lot of information on department stores  
20 so you could develop certain rates for that purpose.  
21 But, generally speaking, you don't develop your own  
22 rate if you are a small underwriter just willy-nilly  
23 and your reporting to ISO would have to be different.

24 Q. Do you know how big of a company  
25 Agricultural was?

1 A. No.

2 Q. Do you know how much premium it wrote?

3 A. Nope.

4 Q. Do you know if it ever filed a deviation  
5 from the rate?

6 A. I do not.

7 Q. Are you familiar with the term  
8 "discounted rate"?

9 A. Yes.

10 Q. What do you understand that to mean?

11 A. There are all sorts of reasons for  
12 discounted rates for what was considered to be a  
13 good -- and I don't think it was in this case -- but it  
14 had a range of rates for a particular policyholders and  
15 the underwriter's judgment was if they were good, then  
16 there was a 25 percent discount. If they were not  
17 good, there was a 25 percent surplus -- surcharge.

18 Q. Discretionary in part?

19 A. Well, it's discretionary within in a  
20 range. That's basically what you are -- each company  
21 has its own actuaries who are setting their own rates  
22 and then they send them down to the underwriters. You  
23 have to do certain things no matter what size the  
24 company is, you have to allocate your policyholder  
25 surplus, you have to figure out how much premium you

1 can take in and what kind of risk you are going to up  
2 rate to. And that's largely the job of actuaries, not  
3 underwriters, but it's obviously an underwriter  
4 function.

5 Q. I'm trying to direct you where in  
6 Paragraph 26; I think it's nine lines down, ten. It's  
7 the sentence in the middle that starts with "The  
8 original ISO CGL form..."

9 A. Correct.

10 Q. What is the original ISO CGL form?

11 A. It's the form that was in effect at that  
12 time. But, actually, the language comes back to --  
13 each of the iterations of the ISO form did not change  
14 the entire language of the ISO form.

15 Q. Right. But my question is when you use  
16 the phrase the original ISO CGL form, which form are  
17 you referring to?

18 A. I think this one may actually have gone  
19 back to the '40s, but it certainly would have been in  
20 the '55 policy.

21 Q. And I am not trying to belabor this. I  
22 just want to make sure that I understand. So the form,  
23 are you talking about the '40 form or maybe '41 or are  
24 you talking about the '55 form?

25 A. Actually --



1 MR. ZOLA: Objection to form.

2 THE WITNESS: Sorry.

3 A. I think even the '41 form contained the  
4 pertinent language limiting -- creating an aggregate  
5 for products. Product liability has almost always had  
6 an aggregate. I have spoken with many people who,  
7 other experts that have never seen one with an  
8 aggregate, but I have.

9 Q. Right. And here with respect to the  
10 Diocese of Duluth, they didn't buy products coverage?

11 A. It appears that's correct.

12 Q. So to continue with that sentence --

13 A. It appears it's correct because it's  
14 excluded in the policy.

15 Q. Right. They didn't buy it in any of the  
16 policies that were issued by Agricultural?

17 A. As far as I know. Although, the policy  
18 has -- the policy in '64 and the policies in '67 had a  
19 specific exclusion for products.

20 Q. That's your understanding of the  
21 policies?

22 A. That's what they had.

23 Q. Paragraph 27 begins with a discussion of  
24 the National Bureau of Casualty Underwriters. Do you  
25 know if Agricultural Insurance Company belonged to the

1 National Bureau?

2 A. I think that is asked and answered. I  
3 don't know which one they belong to, if any.

4 MS. ADAMS: You are doing his  
5 job.

6 MR. ZOLA: I was going to say  
7 you are stealing my thunder.

8 Q. Paragraph 28, Mr. Elliot's article. He  
9 is talking about -- that article is a discussion of the  
10 '66 form; is that right?

11 A. Yes. But it's also a discussion of  
12 history so it includes other parts, as well.

13 Q. Do you have a copy of this article?

14 A. I do.

15 Q. May we have a copy of this article?

16 MR. ZOLA: Of course.

17 MS. ADAMS: We might even be  
18 able to get it during lunch?

19 MR. ZOLA: Yeah, I think so.

20 Sure. Off the record one second.

21 (Off the record.)

22 Q. Paragraph 29, so after referencing your  
23 experience at Liberty and Public Service and AIA, you  
24 say it was the general practice that there would be an  
25 aggregate limits of products including operations but

1 not other exposures. And, again, it's the general  
2 practice, but it's not the only practice; is that  
3 right?

4 MR. ZOLA: Objection to form.

5 A. Well, I said "general practice," by which  
6 I meant there might be, although I can recall no  
7 example of policies which -- first off, I did see  
8 policies; one and maybe two that didn't have an  
9 aggregate for products. I do not recall ever seeing a  
10 policy at the time when I was at Liberty or Public  
11 Service that had an aggregate applicable to  
12 non-products.

13 Q. You didn't work at Agricultural?

14 A. I did not work at Agricultural.

15 Q. And you have no memory of looking at  
16 Agricultural forms other than the ones that you've  
17 looked at in connection to this matter?

18 A. Correct.

19 Q. So you don't know whether Agricultural  
20 did or did not issue policies with aggregate limits for  
21 non-products bodily injury claims?

22 A. Well, I don't think they did in the  
23 policies we have.

24 Q. So you continue on to discuss  
25 non-products bodily injury cases including claims at

1 retail department stores. Are you talking about slip  
2 and falls?

3 A. No, although, they would also be  
4 applicable. The kinds of cases I was thinking about  
5 were ones that were somewhat similar to the archdiocese  
6 claims in that they involved personal injury, usually  
7 false arrest, libel, slander. Some of our biggest  
8 cases at Liberty were -- and also at Public Service,  
9 were false arrest cases --

10 Q. Under Coverage B, personal and  
11 advertising injury?

12 A. Yes.

13 Q. Not bodily injury?

14 A. No. I think they were bodily injury when  
15 personal injury included bodily injury. We talked  
16 about that before.

17 Q. You haven't looked at any of the abuse  
18 claims against the Diocese of Duluth?

19 A. I have seen abuse claims in other  
20 archdioceses -- or other dioceses, excuse me. I read  
21 them.

22 Q. Is it your understanding these claims are  
23 for false arrest?

24 A. No. But there is a similarity in the  
25 kind of harm that arises. For example, when I was at

1 Liberty Mutual we had a claim against Bloomingdale's by  
2 a woman that was arrested, dragged down to  
3 Bloomingdale's by the Bloomingdale's force, put into an  
4 interrogation room --

5 Q. And that's similar to being sexual abused  
6 by a diocese priest?

7 A. Yes. There are the same kinds of  
8 emotional harms. This is actually what I testified to  
9 with regard to the reasonableness of claims in the  
10 Archdiocese of Boson. They had the same kind of  
11 psychological harm. This woman, as it happened, had  
12 been a detainee or a survivor of a concentration camp.  
13 And she was arrested and brought into an interrogation  
14 room. When I was working at Public Service, we had a  
15 false arrest where they broke the criminal's neck and  
16 killed him.

17 Q. The claims with respect to UPS, are those  
18 auto claims?

19 A. No. UPS had the misfortune to have one  
20 fellow, there were other claims, but there was one  
21 fellow who had three assaults and batteries against  
22 him.

23 Q. Is that what you mean by massive bodily  
24 injury, it's a sexual assault claim?

25 A. I don't follow you.

1 Q. You have the phrase "massive bodily  
2 injury exposures." I am trying to understand what a  
3 massive bodily injury exposure would be.

4 A. Well, you can look at it two ways: When  
5 I looked at the Archdiocese of Boston case, I read  
6 every single claim. To the best of my recollection,  
7 there were more than 150. At the end of that you want  
8 to throw up. The same thing when you watch a person  
9 who has been out of a concentration camp being  
10 brutalized by an interrogation force at a store.

11 Q. I am missing what this has to do with  
12 UPS.

13 A. Oh, UPS was one guy beat three people up  
14 on three separate occasions. Those were big awards.

15 Q. Paragraph 30, the last sentence in your  
16 paragraph, you discuss drafting history and  
17 contemporaneous commentary.

18 A. Yeah.

19 Q. You are referencing drafting history and  
20 contemporaneous commentary with respect to the 1966  
21 form?

22 A. Yes.

23 Q. You are not referencing or suggesting in  
24 any way that you reviewed any drafting history with  
25 respect to the Agricultural insurance policy forms?

1           A.     That's correct. But only to the extent  
2 my opinion is that the Agricultural forms that we have  
3 seen are essentially ISO forms.

4           Q.     Right. It's the 1955 form, correct?

5                   MR. ZOLA: Objection to form.

6                   Mischaracterizes his testimony.

7           A.     I don't recall which particular form.  
8 It's an ISO form.

9           Q.     Which form is it?

10                  MR. ZOLA: For which policy?

11                  All of them?

12           Q.     We will start with 1964 to 1967. Which  
13 form is it?

14           A.     To the best of my recollection -- I might  
15 be incorrect -- it was the 1955 ISO form.

16           Q.     We want to make sure it's correct.

17           A.     I am giving you my best recollection.

18           Q.     Well, I want to make sure that your  
19 recollection doesn't change when we see you next time.  
20 So I'm giving you an opportunity to look at the 1964  
21 form, 1964 to '67 policy, which is attached to  
22 Exhibit No. 3, so you can tell which form it is.

23           A.     By the way, I'd add, that in the  
24 pertinent parts of the policy it didn't matter.

25           Q.     Say that last part again.

1           A.     The pertinent parts of the coverage  
2     didn't change.

3           Q.     I understand. You said it was one of the  
4     forms. I just want to know which form.

5           A.     I believe that the form is a 1961 form.  
6     That is the '64 to '67 form.

7           Q.     So we've talked about a form that was  
8     issued in the '40s. We've talked about a 1955 form and  
9     we talked about a 1966 form.

10          A.     Correct.

11          Q.     Which form are you referring to?

12          A.     This one seems to be a 1961 form.

13          Q.     You haven't testified to a 1961 form.

14          A.     That may be correct. But the content of  
15     this form are the same as the 1955 form. The coverage  
16     is --

17          Q.     Can you just explain that to me because I  
18     want to make sure I understand what you are saying.

19          A.     The content of this form is the same as  
20     the '55 form.

21          Q.     Okay.

22          A.     But it lists as the form number of '61.

23          Q.     I see. I understand now.

24          A.     But the language, particularly the limits  
25     of liability language is language coming from the '55.



1           Q.     I understand. So this is the 1955 form,  
2 but it has a date on it of 1961; that's what you are  
3 saying.

4           A.     That's correct.

5           Q.     Now, go to the next policy, which is  
6 67270. It's on the back.

7           A.     Is that Exhibit B?

8           Q.     It is.

9           A.     Yes.

10          Q.     Which form applied to the 1967 to 1970  
11 policy?

12          A.     It looks as it was the 1966 form. But,  
13 once again, it's my opinion that the language, the  
14 crucial language, would have been the same as the  
15 predecessor policy.

16          Q.     You agree with me that the endorsements  
17 are different between the '64 to '67 policy than the  
18 '67 to '70 policy?

19          A.     What endorsement? I see an endorsement  
20 premium.

21          Q.     You are familiar on the decorations page  
22 that the forms and endorsements are identified?

23          A.     You mean -- you are talking here about  
24 the --

25          Q.     No, I will restate the question.

1                   On a declarations page the applicable  
2                   endorsements and forms that make up the policy are  
3                   listed; is that correct?

4                   A.       Sometimes, yes.

5                   Q.       Are they listed on the '64 to '67 form?

6                   A.       I have to go back.

7                   Q.       Well, we can start there. We can start  
8                   on this one.

9                   A.       On the '67 policy, there are listed one,  
10                  two, three, four, five, six endorsements.

11                  Q.       And are those the same endorsements that  
12                  are listed on the '64 to '67 policy?

13                  A.       Two points on that --

14                  Q.       It's a yes-or-no question.

15                           MR. ZOLA: Let him answer the  
16                           question however he wants.

17                  Q.       Are they the same?

18                  A.       We don't know.

19                  Q.       You don't know if those endorsements --  
20                  well, are the endorsement numbers the same?

21                  A.       The numbers are not the same, if that is  
22                  your question.

23                  Q.       That's my question.

24                  A.       That doesn't mean -- you asked me  
25                  actually if the endorsements are the same.

1 Q. That's fine. You can answer that  
2 question, as well.

3 A. We don't know if the endorsements are the  
4 same. They could be different numbers for the same  
5 endorsements. Not uncommon.

6 Q. Is it your opinion that they are the  
7 same?

8 A. I think I already answered that. We  
9 don't know if they are the same. Because all we know  
10 is that the numbers are somewhat different although the  
11 last is 32637D in '67 and 3267 -- wait a minute, I'm  
12 sorry -- that endorsement is the same. Oh, I see.

13 Q. I don't think we did the 1970 to 1973.

14 A. Not yet. Did you want me to do those?

15 Q. I do. So the question with respect to  
16 that is what form was applicable. I think it's  
17 Exhibit C.

18 A. Yeah, it is. And there are, once again,  
19 three form numbers -- I'm sorry, five form numbers, and  
20 I'm sorry but this takes a moment to do.

21 Q. No, it's okay.

22 A. Okay. Form No. 6620 is the same number  
23 in the '67 policy. In the --

24 Q. Do you know if that endorsement, the  
25 terms and conditions of that endorsement?

1 A. No.

2 Q. Have you ever tried to look for these  
3 endorsements?

4 A. No. How would I look for them? They are  
5 not attached to this policy. Let's see here.

6 Q. Do you have a library of forms?

7 A. Do I?

8 Q. Yes.

9 A. No.

10 Okay. So that's -- there is a -- the  
11 second and third form listed in the '73 policy appear  
12 to be repeated in the next policy. And 19L9 on the 41  
13 is the same.

14 Q. That's the one endorsement we do have,  
15 which is the products exclusion.

16 A. Good. That's correct. They do have a  
17 products exclusion, which is a specific exclusion of  
18 the policies, both of them middle-year policies.

19 Q. Paragraph 33. "When an insurance company  
20 does something unusual it explicitly notes that it's  
21 unusual." What do you mean by that?

22 A. Well, I mean, for example, when policies  
23 are written on a claims-made basis, it says this is a  
24 claims-made policy. Sometimes it will go further and  
25 say this is an important -- this is an important change

1 in the policy. And that's good custom and practice.  
2 In the...

3 Q. How about in the comprehensive general  
4 liability context?

5 A. Well, if you are doing something that the  
6 policyholder didn't expect, the expectation of the  
7 policyholder was that they would be receiving a  
8 standard policy.

9 Q. What is your basis for your statement?

10 A. I didn't finish the statement.

11 Q. Okay.

12 A. If the policyholder is expecting a  
13 certain kind of policy and the policy is different than  
14 that expectation, then that is normally listed. For  
15 example, the 1964 to '67 policy is replaced by the 1970  
16 policy. And you can see it's expired and replaced. In  
17 my opinion, if it were going to be different, it would  
18 say here new policy or expired in place, but with a  
19 different condition so that the policyholder would know  
20 that if they previously had, for example, a  
21 no-aggregate limit and now we are getting an aggregate  
22 limit, that would be a very, very substantial reduction  
23 in coverage. And I would expect to see something here  
24 which says this policy is different than the policy it  
25 replaces because it is changing the coverage to a

1 significant extent in reducing coverage by asserting an  
2 aggregate.

3 Q. Is it your testimony that the custom and  
4 the practice in the industry in 1970 was if any term or  
5 condition changed upon the renewal of a policy, it had  
6 to be identified?

7 A. That was not my testimony. My testimony  
8 is that if the policy had any significant change than  
9 that would that identified. It would not be called a  
10 replacement or a replacement policy.

11 Q. It's your testimony that the custom and  
12 practice in the industry in 1970 was that if there was  
13 a, I think you said, substantial or significant change  
14 in the coverage, it would be placed on the declarations  
15 page?

16 A. Yes; that is correct.

17 Q. Is it your testimony that if there was a  
18 change from what you are describing as the ISO standard  
19 form, that that would also be placed on the  
20 declarations page?

21 A. It would depend on the significance.  
22 See, for example, the notice condition said in one year  
23 provide notice to such-and-such an address and then in  
24 the next year or the next policy it said provide notice  
25 to such-and-such different address, I wouldn't expect

1 so. But where there would be a change in coverage  
2 which would, in my opinion, necessitate a change in  
3 premium then that would be identified.

4 Q. Unless --

5 A. In other words --

6 Q. Go ahead.

7 A. Just to be clear, when you go from a  
8 policy with no aggregate to a policy with an aggregate  
9 you are very substantially changing the coverage and  
10 you are changing the premium that should be charged and  
11 a premium reduction should be reflected, and given that  
12 change, it should say so.

13 Q. And the decorations page should reflect  
14 that such an aggregate is going to apply?

15 A. It normally would, yes.

16 I note, by the way, there is no -- the  
17 premium was the same in the first two policies  
18 indicating that they were rated and premium assessed in  
19 the same format, both premiums being, to the best of my  
20 recollection \$337 per annum. So the two policies have  
21 the same premium and I assume custom and practice would  
22 be that that reflects they have the same risk.

23 MR. ZOLA: When you say "the  
24 first two policies," do you mean  
25 Exhibits A and B to the Liberty

1 Mutual answer?

2 THE WITNESS: Yes. I was  
3 referring to the '64 to '67 policy  
4 and then the '67 to '70 policy.  
5 Those are the policies that both  
6 have the same premium.

7 Q. They are also written on an audit basis?

8 A. But they both list the premium. Although  
9 it's a little hard to tell in the -- at least from the  
10 deck page of the '77 policy, that's policy number --  
11 oh, I can't even read it. But the '67 policy, on the  
12 deck page, does list limits of liability and then has  
13 advanced premium, but it appears to me that it has been  
14 cut off on this piece of paper. That is the extreme  
15 right-hand column on the deck page.

16 MS. ADAMS: We've gone an  
17 hour again. Can we take a break?

18 (Luncheon recess.)

19 Q. Could you please go to Page 12 of your  
20 report, which you are there. In Paragraph 33, in the  
21 second sentence you state, "In this case, one of the  
22 few parts of the insurance policies at issue that have  
23 been located are the policies' declarations page and  
24 they are standard form." And for that you are  
25 referring to the 1964 to 1967 policy; is that correct?



1 A. Yes.

2 Q. And that policy is the 1955 specimen  
3 form; is that correct?

4 A. That's correct.

5 Q. So continuing on with your report, "This  
6 means that almost certainly the rest of the policy  
7 would be the standard ISO form and would include  
8 language limiting aggregate to completed operations and  
9 products liability."

10 And you're basing that conclusion on the  
11 fact that the '64 to '67 policy is a 1955 form; is that  
12 correct?

13 A. Yeah. It also has language limiting  
14 products, limiting aggregate to products.

15 Q. Again, on the nomenclature, when you are  
16 using words "standard ISO form," ISO was not in  
17 existence until 1971, you are referring to the rating  
18 bureau specimen forms from 1955 and 1966; is that  
19 correct?

20 A. Right. And just to be clear, although,  
21 there were, as we've discussed, more than one rating  
22 bureau, the comprehensive general liability policy was  
23 a collaborative effort.

24 Q. If you could go to Page 14, Paragraph 36.

25 MR. ZOLA: Nancy, I'm going

1 to interrupt just because your  
2 questions were limited just to the  
3 '64 to '67 policy?

4 MS. ADAMS: No. The first  
5 was sentence -- the first was '64 to  
6 '67 and that second sentence relates  
7 to the others.

8 Q. On Paragraph 36, just sort of the last  
9 sentence, "This language is part of that ISO CGL form."  
10 And I will give you a chance to read that paragraph. I  
11 just want to make sure, again, on nomenclature we are  
12 talking about the pre-ISO rating bureau forms, 1955 and  
13 1966.

14 A. Could I have the question again?

15 Q. Sure. The language "as part of the ISO  
16 CGL form," just so we have a clear record, I just want  
17 to make sure that your report, in terms of what you are  
18 testifying to, is actually clear that you are talking  
19 about what is actually pre-ISO forms.

20 A. Yes, although ISO forms have the same  
21 language.

22 Q. Right. But the forms we are talking  
23 about and have talked about today from the '40s, the  
24 '55 and '66, are all pre-ISO forms, correct?

25 A. Right.

1 Q. If you can go to Page 16?

2 A. Moving along. Sixteen, "Conclusions."

3 Q. If you could read your conclusion.

4 A. Yes.

5 Q. This conclusion is based upon the fact  
6 that the rating bureaus had standardized forms in '55  
7 and '66 and that the 1964 to 1967 policy incorporated  
8 the 1955 form; is that correct?

9 MR. ZOLA: Objection.

10 A. In part.

11 Q. And what are the additional?

12 A. Well, the additional part is, as I  
13 mentioned before, that if you were renewing a policy  
14 with a significant deviation from a prior policy, you  
15 would say so. In addition, the fact that you had a  
16 very significant reduction in coverage would normally  
17 be reflected in a reduction in premium, whereas premium  
18 for the two policies we have with premium is exactly  
19 the same, \$337. So custom and practice in the  
20 insurance industry is if -- it's important to  
21 understand that an aggregate is a tremendous limitation  
22 on a coverage. It means that instead of getting  
23 X-dollars for just one, using it up, if you have an ton  
24 of claims below whatever the attachment or the top is,  
25 you are covered for all of them, which may be hundreds

1 of claims, in fact, I suppose that's what we are  
2 arguing about -- or you guys are arguing about.

3 Q. Is there --

4 A. But -- so it's a very significant,  
5 significant change in coverage. And to the extent that  
6 there would be such a change, custom and practice would  
7 be that there would be a reduction in premium and that  
8 there would be a statement that that was current.

9 Q. Is there anything else that you would  
10 like to add with respect to that answer?

11 A. Yes. I also do not believe that the --  
12 Liberty's contention, the X under comprehensive and  
13 general liability, means that there was no product  
14 liability included. And I disagree with that because,  
15 in fact, at that time, it was common to just check  
16 comprehensive and general liability because it included  
17 all of the other coverages. And that's why these  
18 policies have separate exclusions to exude product  
19 liability. If product liability wasn't covered under  
20 this X argument, there would be no reason to have an  
21 exclusion subsequent in the policy.

22 Q. Is there anything else you would like to  
23 add to that answer?

24 A. At the moment that's it.

25 MR. ZOLA: I object to the

1 question to the extent that  
2 everything else he mentioned in the  
3 report including the ten paragraphs  
4 you just skipped are also basis for  
5 his conclusion.

6 MS. ADAMS: Understood.

7 Understood.

8 Q. Can you give me an example of a policy  
9 that you've seen for a comprehensive general liability  
10 policy between 1964 and 1973 that identified a  
11 deviation in coverage as you have been describing?

12 A. Can I give you an example? I can't  
13 identify particular policies. I know I've seen that  
14 with AIG several times.

15 Q. On the claims-made side?

16 A. No, I'm talking before claims-made.

17 Q. On the comprehensive general liability?

18 A. That's correct.

19 Q. Have --

20 A. And I think I have also seen it with  
21 Travelers, but I cannot identify a particular policy.

22 Q. And what was the policy provision at  
23 issue?

24 A. Oh, I don't recall.

25 Q. Have you read Henry Buse's report in this

1 case?

2 A. No.

3 Q. If you go back to your report on Page 16,  
4 under references, you identify six documents.

5 A. Yes.

6 Q. Are there any other documents that you  
7 relied upon with respect to your report other than the  
8 six that are identified?

9 MR. ZOLA: Objection.

10 MS. ADAMS: What is your  
11 objection?

12 MR. ZOLA: There is also a  
13 documents considered section.

14 MS. ADAMS: That's fair. So  
15 let me read...

16 Q. So with the exception of the references  
17 listed one through six and the documents considered  
18 section, are there any other documents or reference  
19 materials that you relied upon in preparing this  
20 report?

21 A. Well, there are some documents that I did  
22 not list, but they are a part of my -- they are listed  
23 in my CV. So they would be things that I wrote, things  
24 that might come up if I'm asked certain questions, for  
25 example, I wrote and referred to before a paper on

1 product liability insurance. I wrote three insurance  
2 policies, created three companies. Those are all  
3 things that I have done. I don't highlight them, but  
4 they are all in my CV.

5 Q. What are the three insurance companies  
6 that you created?

7 A. Let me explain. The first and biggest  
8 one was a company called PharmCat, that's P-h-a-r-m-,  
9 capital C-a-t. That was a combined program written by  
10 AIG and Commerce ampersign -- ampersand Industry, C&I.

11 Q. That's an insurance company?

12 A. Yes. That was Warren Buffet's. And that  
13 was a policy of \$1.1 billion excess of \$800,000 million  
14 for pharmaceuticals.

15 Q. And you were the founder of this company?

16 A. Nothing is ever that simple. I was a  
17 member of a team of five people, including two  
18 underwriters or two people from AIG, people from -- and  
19 two sets of lawyers and me.

20 Q. And what was the second insurance company  
21 you created?

22 A. The second insurance company, I don't  
23 know if it ever got a name -- oh, no, it did. The  
24 second was NACC, N-A-C-C, Risk Retention Group.

25 Q. And the third?

1           A.     The third did not get a name.

2           Q.     Did it die?

3           A.     It was a consortium of companies that  
4     shared jet A fuel storage facilities. It was to  
5     provide coverage for them. We wrote the policy, we got  
6     agreement from the carriers -- from the potential  
7     policyholders. And it was to cover for environment  
8     exposes, but it had a \$25 million limit. We did a  
9     survey of one location where cleanup might have been  
10    required and we discovered that that would likely be a  
11    billion-dollar loss. So we disbanded it because no one  
12    wanted to buy a \$25 million coverage.

13          Q.     What was the timeframe of these?

14          A.     The AIG one was in 1996 or '97 and the  
15    others were much earlier. NACC was right after I  
16    joined Johnson & Higgins, almost right after. So that  
17    would be '86. And I did the underwriting and policy  
18    forms for all of those. Just to be clear, we did not  
19    decide to underwrite on any of those because the  
20    policyholders wouldn't meet our conditions.

21          Q.     Also attached to your report is a copy of  
22    your CV, which we've talked about today.

23          A.     We did?

24          Q.     Is this a current version of your CV?

25          A.     I gave possibly a more recent one to



1 counsel.

2 MR. ZOLA: This is the one as  
3 of February 1.

4 THE WITNESS: Yeah, I think I  
5 wrote one report since February 1.

6 Q. Other than the one report that you're  
7 written, does this CV list all the cases in which you  
8 have testified both at trial and at deposition?

9 A. As an expert, yes. I've testified in  
10 other circumstances.

11 Q. Does it also identify all of those cases  
12 in which you've prepared a report?

13 A. Yes. It's not limited to four years  
14 either.

15 Q. I noticed that.

16 So it appears that you have testified a  
17 great deal since you retired primarily in two areas or  
18 provided expert reports in two areas, one, pollution  
19 and the second, asbestos coverage; is that fair to say?

20 MR. ZOLA: Objection to form.

21 A. I would say it's not correct. I would  
22 say that the largest number of cases involved asbestos  
23 or environmental usually, and with regard to  
24 availability of insurance, but a lot of the cases don't  
25 involve asbestos or environmental.

1 Q. I wasn't trying to limit you. It just  
2 looked like there was a lot of environmental background  
3 and a lot of work maybe on the pollution exclusion.

4 A. That's correct. I have a good  
5 background.

6 Q. From the pollution wars?

7 A. Form the pollution wars, but also I know  
8 the people who wrote the absolute exclusion, to it my  
9 wife. I worked with ISO.

10 Q. When did she write the absolution  
11 exclusion?

12 A. She was the -- let me clarify that. Just  
13 so you understand, you know how ISO works.

14 Q. Yes.

15 A. Okay. So you have a committee of  
16 underwritings and then you have a staff person  
17 assigned. My wife was the staff person. So when it  
18 comes to the final wording, she was the scripter.

19 Q. When was that, the absolute?

20 A. The one she was on was '67. And it's not  
21 absolute in any case. I mean, it didn't include  
22 products.

23 Q. Because there was no such exclusion  
24 before then.

25 A. Well, that's not correct. Each company

1 had its own exclusions. And the original so-called  
2 absolute exclusion was drafted by Dick Schmaltz at  
3 Hartford, who formally was at Liberty Mutual. And  
4 Hartford, for example, asked him to draft an exclusion  
5 that nothing could get through.

6 Q. Is any part of your fee related to the  
7 Diocese's success in this litigation?

8 A. No. The only fees I've ever had that  
9 were related to success would have been in consulting  
10 matters.

11 MS. ADAMS: Do you have the  
12 invoice?

13 MS. McgEE-TUBB: Yes.  
14 (Defendant's Exhibit 4, Invoice from  
15 Dennis Connolly dated February 11, 2018,  
16 marked for identification.)

17 Q. I'm giving you what we've marked as  
18 Exhibit No. 4. Do you recognize that document?

19 A. I do.

20 Q. What is the document?

21 A. That's my invoice of February 11, 2018,  
22 to Jared Zola and James Murray, and it's for work on  
23 the Diocese.

24 Q. I think consistent with what you had  
25 testified to earlier today, on January 7 you had a

1 first conversation with Jared Zola. And then it  
2 appears after that that you reviewed documents. Are  
3 those the documents that we've talked about today that  
4 are either in the reference or in the documents  
5 considered?

6 A. Yes, that's correct.

7 Q. Are there any other document?

8 A. Well, other than my general background,  
9 no.

10 Q. It identifies a drafting meeting. Who  
11 attended that meeting?

12 A. Jared Zola.

13 Q. What did you do at that meeting?

14 A. We talked about the case and we started  
15 drafting.

16 Q. What facts did he tell you about the  
17 case?

18 A. He showed me the policies and he showed  
19 me the Liberty answer and explained the contentions.

20 Q. Did you draft a report together?

21 A. I told him what to say. A lot of the  
22 report comes from previously-written reports.

23 Q. You told Jared what to say?

24 A. Yes. I don't type so I don't -- I always  
25 rely on someone to be the scripter.

1 Q. So Jared -- I should say Attorney Zola  
2 typed the report for you?

3 A. I don't know whether he typed it or  
4 whether someone in his office typed it. But someone at  
5 Blank Rome typed it.

6 Q. Was it an in-person meeting?

7 A. The meeting I am describing here was  
8 in-person.

9 Q. Other than Attorney Zola, did anyone else  
10 review your report that you know of?

11 A. That I know of, no.

12 Q. Were there any proposed revisions to your  
13 report?

14 A. I certainly proposed some revisions.

15 Q. Did Blank Rome or any other attorney  
16 propose a revision to your report?

17 A. Not that I recall.

18 Q. How many drafts were there of your  
19 report?

20 A. There was one draft and a final.

21 Q. Where is the draft?

22 A. It's subsumed in the final.

23 Q. You don't have a copy of the draft?

24 A. No.

25 Q. What brought your attention to the

1 Schreiber piece?

2 A. When I -- my last trial was a matter of  
3 Utica Mutual versus...

4 Q. Fireman's Fund?

5 A. Yes.

6 Q. That arose because I was a witness in a  
7 case called Goulds, in which the issue of the  
8 aggregates for products came up together with the  
9 amount of insurance that people might have brought at a  
10 particular time. During the course of research in  
11 that, I came across both the Schreiber piece, the  
12 Nockman piece and some other pieces. Then when I was  
13 involved in the preparation for the trial of Utica  
14 Mutual against Fireman's we also used the same  
15 documents.

16 I should mention, by the way, that the  
17 Richmond piece appears in the -- and you called it the  
18 Schreiber piece --

19 Q. I called it the Schreiber piece because  
20 it's on your bill as that.

21 A. Right. The thing about Sol Schreiber is  
22 when I was hired at Liberty Mutual, I was hired by  
23 Sol Schreiber.

24 Q. And after reading that, you revised your  
25 report?

1           A.     A lot of the report comes from  
2     previously-written reports. There was no reason to  
3     reinvent the wheel when I have handy language. I mean,  
4     a lot of these issues came up in the Archdiocese of  
5     Boston.

6           Q.     Were there any e-mail communications  
7     between you and anyone regarding your report?

8           A.     Not that I recall other than transmittal  
9     of the final.

10          Q.     Did you prepare for today's deposition?

11          A.     I did.

12          Q.     What did you do to prepare for today's  
13     deposition?

14          A.     I read the materials, my report, the  
15     documents associated with it, and my CV. And then on  
16     Monday, I met with Jared Zola.

17          Q.     How long did meet with Jared Zola?

18          A.     I think maybe four or five hours.

19          Q.     Four or five hours?

20          A.     Hours.

21          Q.     You did discuss any of the facts of the  
22     case during that meeting?

23          A.     Yes.

24          Q.     What facts did you discuss?

25          A.     We talked about the policies, those are

1 the facts. We talked about the fact that the Fireman's  
2 CNA policy, which is the other bookend policy that  
3 picked up I think in February of '73, had the same  
4 provisions as the '64 - '67 policy, the fact that that  
5 did include a doctrine right now I am calling bookends,  
6 which is a common document used in the -- common  
7 doctrine used in these missing policy cases, where if  
8 you had one kind of coverage in '64, '67, you sure  
9 about that, and then you picked up a new policy in '73,  
10 the likelihood would be that those policies are the  
11 same. That is something I testified for Allianz,  
12 Great American, Hartford, Utica Mutual.

13 Q. The Agricultural policy from '64 to '67  
14 had the same terms and conditions as the subsequent CNA  
15 policy?

16 A. Yes, basically with regard to the  
17 aggregate.

18 Q. How about with regard to anything else?

19 A. I didn't look at it with regard to other  
20 things. Although, I did note, if I recall correctly,  
21 the premium didn't go up much.

22 Q. So the CNA policy, is also the '55 form?

23 A. It's the basic coverage of the CGL.

24 MS. ADAMS: I believe I'm  
25 done. I know Scott has a couple of



1                   questions. So instead of me  
2                   breaking to go through everything,  
3                   do you want to pick up and do you  
4                   want to come down here?

5                   MR. TURNER: Sure. I don't  
6                   know if I said I have a couple  
7                   questions, but it would be more than  
8                   two I'm sure.

9                   THE WITNESS: But you did say  
10                  half an hour.

11                  MR. TURNER: But it would be  
12                  less than half hour.

13                  EXAMINATION

14                  BY MR. TURNER:

15                  Q. So I know we were introduced earlier and  
16                  we have spoken since, but my name is Scott Turner and  
17                  I'm an attorney for the Continental Insurance Company,  
18                  which is the successor by merger to the Fireman's  
19                  Insurance Company of Newark, New Jersey.

20                  You were just speaking just now about  
21                  having reviewed the Fireman's 1973 to 1976 primary  
22                  policy as part of your bookend analysis. And I wanted  
23                  to kind of talk a little bit more about that policy  
24                  since it's my understanding you reviewed the policy; is  
25                  that correct?

1 A. I think so, yes.

2 Q. I will just mark this as an exhibit here.

3 MR. TURNER: For the record  
4 this is not a complete copy of the  
5 policy. It's just the CGL part.

6 (Defendant's Exhibit 5, Excerpt from policy  
7 Bates stamped DD\_INS\_00234 to DD INS 00244,  
8 marked for identification.)

9 Q. If you just take a look at it.

10 A. Go ahead, Counselor.

11 Q. And so this Exhibit 5, is this a document  
12 that you've seen before?

13 A. To tell the truth, it doesn't look  
14 familiar, but I know I've seen the policy.

15 Q. Because I believe you've referenced in  
16 one of the pages in the report, if you want to look at  
17 Exhibit 2.

18 MR. ZOLA: Scott, in  
19 fairness, I think it was yesterday  
20 or the day before when counsel asked  
21 what were the Bates ranges of the  
22 policy that was shown to  
23 Mr. Connolly we gave the entire  
24 Bates range, so certainly the first  
25 page of Exhibit 5 is not going to

1 look like the first page that  
2 Mr. Connolly saw because this is an  
3 excerpt.

4 MR. TURNER: Right, it's an  
5 excerpt.

6 MR. ZOLA: It doesn't have a  
7 year on it.

8 MR. TURNER: I appreciate  
9 that. I didn't want to carry a  
10 whole box of documents. So I  
11 apologize.

12 Q. But if you look at Page 16 of your  
13 report, which is Exhibit 2, there is a reference on the  
14 top of the page to the limits of liability provisions  
15 and then you refer to CNA 1973 to 1976 CGL policy and  
16 it has a Bates number there, "DD\_INS\_00238." Do you  
17 see what I'm referring to?

18 A. I do. DD, yes, I do.

19 Q. And if you look at what I've given you as  
20 Exhibit 5, if you refer to DD\_INS\_00238, you'll see it  
21 has that Bates number at the bottom.

22 A. Yes.

23 Q. Does that look like that's the document  
24 that you were referring to in your report?

25 A. Yes.

1 Q. Okay. And at the bottom of the page, is  
2 that Roman numeral three and it says limits of  
3 liability section?

4 A. Yes.

5 Q. It sounds like from your report here, on  
6 Page 16, that you reviewed this limits of liability  
7 section within Exhibit 5.

8 A. Yes.

9 Q. And you were referring it with regard to  
10 the issue of aggregate limits; is that correct?

11 A. Well, the policy and that section, yes.

12 Q. Is this what you would refer to as a  
13 standard ISO form?

14 A. It certainly looks it, yes.

15 Q. And --

16 A. I mean, it is generally a standard ISO  
17 form. As we discussed before, there could be some  
18 changes, for example, under policy territory, the  
19 individual companies do change that to make it  
20 worldwide or to limited it to the United States or  
21 Canada, but that would not effect the standardized  
22 nature of it.

23 Q. And what about the limits of liability  
24 provision here? When you reviewed it previously you  
25 didn't suggest in your report that this deviated?

1 A. That's correct. It did not.

2 Q. It looks like it's standard language?

3 A. Yeah.

4 Q. Sir, if you could just take a look at the  
5 bottom of the page, so that DD\_INS\_00238, there is this  
6 paragraph, "Subject to the above provision respecting  
7 'each occurrence,' the total liability of the company  
8 for all damages because of (1), all bodily injury  
9 included within the completed operations hazard and (2)  
10 all bodily injury included within the products hazard  
11 shall not exceed the limit of bodily injury liability  
12 stated in the declarations as "aggregate."

13 Do you see that section there?

14 A. Yes.

15 Q. Is that something you reviewed?

16 A. Yes.

17 Q. And so I think from your previous  
18 testimony you concluded that to the extent there is an  
19 aggregate in this policy, it's for the products and  
20 complete operations.

21 A. That's correct.

22 Q. And just looking at the paragraph before,  
23 just above that, it says, "Coverage A -- The total  
24 liability for the company for all damages, including  
25 damages for care and loss of services, because of

1       bodily injury sustained by one or more persons as the  
2       result of one occurrence shall not exceed the limit of  
3       bodily injury liability stated in the declarations as  
4       applicable to 'each occurrence.'"

5                       And do you see that section there?

6               A.     I do.

7               Q.     Is it your understanding that this policy  
8       provides an each-occurrence limit?

9               A.     Yes.

10                   MR. ZOLA:   Scott, I'm just  
11                   going to object to the fact that  
12                   this excerpt that you provided --  
13                   disregard, withdrawn.

14               Q.     Well, maybe to clarify, would you like to  
15       look at the deck page?

16               A.     I did.

17               Q.     Do you see an each-occurrence limit  
18       there --

19               A.     I did.

20               Q.     -- for bodily injury liability?

21               A.     Yes.

22               Q.     For under Coverage A?

23               A.     Yes.

24               Q.     And what is that limit?

25               A.     Coverage A, it's \$300,000.

1           Q.     And then next to it, it says: Aggregate  
2     dollar sign not covered.

3           A.     Right.

4           Q.     Is that something that you reviewed?

5           A.     Yes.

6           Q.     And then on your report you referenced  
7     that this is -- this policy was issued 1973 to 1976, so  
8     it's a three-year policy?

9           A.     It's certainly a policy that was intended  
10    to be three years and began in -- if I recall  
11    correctly.

12          Q.     I don't think we have the dates on that  
13    because it's not that kind of a coverage sheet for the  
14    entire policy.

15          A.     Right. All I am getting at is I know,  
16    again, in '73, we only had one policy. It was a  
17    three-year policy. It was canceled after two months.  
18    So as far as I know, this was intended to be a  
19    three-year policy and was a bookend at the same  
20    provisions as the first.

21          Q.     And just to be clear, you didn't look at  
22    any of the other policies that Fireman's may have  
23    issued?

24          A.     No.

25          Q.     Just this one?

1           A.     Just this one. The one I am familiar  
2 with is CNA.

3           Q.     And looking at the next page,  
4 DD\_INS\_00239, do you see there, the second-to-last  
5 paragraph in the limits of liability section, it says,  
6 "Coverage A and B -- for the purpose of determining the  
7 limit of the company's liability, all bodily injury and  
8 property damage arising out of continuous repeated  
9 exposure to substantially the same general conditions  
10 shall be considered as arising out of one occurrence."

11                     Did I read that correctly?

12           A.     I think you did.

13           Q.     Is this language that you reviewed  
14 before?

15           A.     I have seen this language before.

16           Q.     Would you say thousands of times?

17           A.     Hundreds, maybe thousands.

18           Q.     The next paragraph below that -- I think  
19 this is the final time I am going to read a paragraph.  
20 "Any limit of the company's liability stated in this  
21 endorsement as aggregate shall apply separately to each  
22 consecutive annual period comprising the policy  
23 period."

24                     Did I read that correctly?

25           A.     I think you did.



1           Q.     Is this language you looked at to prepare  
2     your report?

3           A.     Yes.

4           Q.     Have you seen this language before?

5           A.     I am pretty sure I have.

6           Q.     Hundreds of times?

7                   MR. ZOLA:   Scott, I'm going  
8                   to object to this line of  
9                   questioning. This is beyond the  
10                  scope of the direct. You didn't  
11                  notice his deposition. It's beyond  
12                  the scope of his report. And you  
13                  know well that we have a separate  
14                  expert on this issue that you are  
15                  trying to get at, so I would save  
16                  these questions for Mr. Bogart.

17                  MR. TURNER:   So you are going  
18                  to direct him not to answer?

19                  MR. ZOLA:   Well, There is a  
20                  question pending, but if you ask  
21                  more about utilization, which you  
22                  know this expert is not being  
23                  proffered for, I am going to direct  
24                  him not to answer.

25          Q.     All right, well, according to this last

1 paragraph, this limits of liability section, does it  
2 create a separate annual period for the aggregate  
3 period?

4 MR. ZOLA: I am going to  
5 direct him not to answer. He just  
6 said he did not rely on it in  
7 forming the basis of his opinion as  
8 set forth in his report.

9 MR. TURNER: All right. If  
10 you direct him not to answer, then I  
11 won't ask any more questions.

12 I will turn the floor back  
13 over to Nancy.

14 See, that was much less than  
15 half an hour.

16 THE WITNESS: Well, you get  
17 to come back and have another 28  
18 minutes.

19 BY MS. ADAMS:

20 Q. Towards the end of your discussion, our  
21 questions, you referenced an expert report that you had  
22 prepared in the Utica Fireman's Fund matter.

23 A. Yes.

24 MS. ADAMS: We would like to  
25 request a copy of that.

1 MR. ZOLA: We will certainly  
2 take that under advisement.

3 MS. ADAMS: We are requesting  
4 it because he relied upon it and  
5 that's where he had learned about  
6 the Schreiber information he and  
7 given his testimony regarding it, we  
8 would like it.

9 MR. ZOLA: I have no idea if  
10 it's under order, confidentiality  
11 order, but we will take it under  
12 advisement.

13 THE WITNESS: Also I think I  
14 learned about the Schreiber's  
15 case -- document in the Goulds case,  
16 which is before that.

17 MS. ADAMS: Well, the record  
18 speaks for itself. I thought you  
19 had discussed the Utica Fireman's  
20 Fund testimony.

21 That's all we have.

22 MR. ZOLA: I just want to  
23 clarify. May I ask a question?

24 MS. ADAMS: See what happens.

25 EXAMINATION

1 BY MR. ZOLA:

2 Q. Mr. Connolly, I would like to direct your  
3 attention to your expert report that was been marked as  
4 Exhibit 2 and specific Paragraph 33, which appears on  
5 Page 12 of that report.

6 A. Yes, I found the section.

7 Q. In the second sentence of Paragraph 33,  
8 which reads, "In this case, one of the few parts of the  
9 insurance policies at issue that have been located are  
10 the policies' declarations pages and they are standard  
11 form." When you wrote that sentence in Paragraph 33 of  
12 your report to which insurance policy or policies were  
13 you referring?

14 A. I think I was referring to both.

15 Q. I couldn't hear.

16 A. All of them.

17 Q. And when you say "all of them," is there  
18 any insurance company you have in mind?

19 A. Well, I was referring to the policies  
20 involved in this case and so I was referring in this  
21 case to Agricultural.

22 MR. ZOLA: I have no further  
23 questions.

24 MS. ADAMS: I think we are  
25 fine.

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(Witness excused.)

(Deposition concluded 1:50 p.m.)

## C E R T I F I C A T I O N

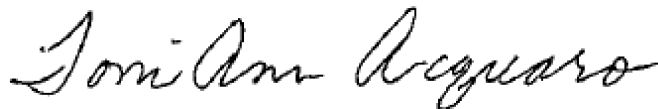
STATE OF NEW YORK )  
: ss:  
COUNTY OF NEW YORK )

I, TONIANN ACQUARO, a notary public for  
and within the State of New York, do hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and that such  
examination is a true record of my shorthand notes.

I further certify that I am not related  
to any of the parties to this action by blood or by  
marriage and that I am in no way interested in the  
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 15th day of March, 2018



ToniAnn Acquaro,  
Professional Court Reporter  
and New York State Notary, 01AC6200255  
My Commission Expires January 26, 2021

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## ERRATA SHEET

CASE: DIOCESE OF DULUTH v. LIBERTY MUTUAL, ET AL.

DEPOSITION DATE: MARCH 15, 2018

DEPONENT: DENNIS CONNOLLY


PAGE	LINE(S)	CHANGE	REASON
2	12, 20	Change counsel's name	Improper counsel listed
passim		Change "Deck" to "dec."	Transcription error
16	22	Delete "Fund"	Transcription error
20	24	Delete "pay less than 3% of what" and insert "pay 3% less than"	Transcription error
32	13	Delete "up" and insert "favorable"	Clarification
33	7	Delete "policy over" and insert "policyholder"	Transcription error
37	20	Delete "current" and insert "occurrence"	Transcription error
45	23	Insert "and" between "Congress" and "regulators"	Transcription error
52	19	Delete "statically" and insert "statistically"	Transcription error
57	7	Delete "one with" and insert "a products liability policy without"	Clarification
70	8	Delete "than" and insert "then"	Transcription error
82	7	Delete "form" and insert "from"	Transcription error
82	16	Delete "underwritings" and insert "underwriters"	Transcription error
82	18	Delete "scripter" and insert "scrivener"	Transcription error
84	25	Delete "scripter" and insert "scrivener"	Transcription error



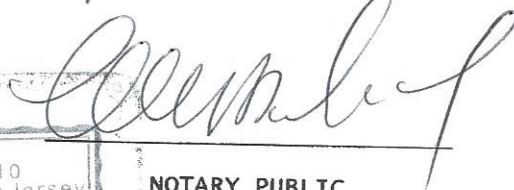
DENNIS CONNOLLY

CERTIFICATE OF DEPONENT

I have read the foregoing transcript of  
my deposition and except for any corrections or  
changes noted on the errata sheet, I hereby  
subscribe to the transcript as an accurate record  
of the statements made by me.

  
Dennis R. Connolly

SUBSCRIBED AND SWORN before and to me  
this 06<sup>th</sup> day of April, 2018.



IVAN BALEV  
Commission # 2273810  
Notary Public, State of New Jersey  
My Commission Expires  
April 03, 2021

NOTARY PUBLIC

My Commission expires:

IVAN BALEV  
Commission # 2273810  
Notary Public, State of New Jersey  
My Commission Expires  
April 03, 2021